Written evidence from the Association of Panel Members

About the Association of Panel Members

AOPM is a charity founded in 2006 as the membership organisation for the 5000 community volunteers supporting Youth Offending Teams (YOTs) in England & Wales.

The purpose of the Association is to advance the performance of Panel Members in performing their civic duties.

We promote good practice in delivering restorative justice to communities afflicted by youth crime and advocate for the rights of children in the criminal justice system, particularly in respect of access to education provisions for those with restricted engagement in education.

Key areas of focus and desired outcomes of the Restorative Justice Action Plan for the criminal justice system to March 2018

1. Equal access – RJ is available to victims at all stages of the criminal justice system irrespective of whether the offender in the case is an adult or a young person and irrespective of where in the country the victim lives and where the offender is located. Victims should not be denied RJ because of the offence committed against them.

Access Restriction

Access to RJ has a chequered history to date. The Offences Brought to Justice (OBTJ) and target chasing culture meant that RJ disposals did not count towards Home Office Counting Rules for sanction detection and computation of police bonus payments. When the OBTJ measure was removed in 2009 and replaced by Community Resolutions (CR) which counted as a detected sanction, this prompted wholesale application of CR to inappropriate settings including Domestic Violence cases. This added to public confusion about the nature, quality and delivery of RJ and to suspicion by the re-victimised, coerced into ‘Street RJ’, and the reluctant, resulting in a belated statement from the Restorative Justice Council on police practice of RJ.1

That RJ was not included in Home Office counting rules enabled non-compliance by the police with the 1998 Crime and Disorder Act which created the duty for agencies to collaborate in the YJ system and to cooperate with YOTs in sharing victim contact details to enable court ordered RJ to take place. In 2008, the YJB were still awaiting transfer of information. “Key deliverable - All police forces will electronically transfer details of … together with victim information to YOTs by December 2008.”2

Although some forces cooperated with information sharing, e.g. by police officers’ occasional visits to YOTs to access and share victims’ data held on the Police National Computer (Devon and Cornwall, Wiltshire, Surrey, Lincolnshire) most did not (Metropolitan police, Norfolk etc). The result was an almost total absence of victim participation in the first national implementation of RJ in the UK – the youth Referral Order.3 Consistent with the ethic of voluntary participation by all parties, victim

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1 Restorative Justice Council: Community resolution and restorative justice - 24 September 2014
2 Youth Justice Board Annual report & Accounts 2008 p13
3 Youth Justice and Criminal Evidence Act 1999
attendance at court ordered panel meetings was mandated, but not compulsory. This however, provided justification for non-collaboration to share victims’ information.

*De facto* absence of victims’ contact data, combined with the appropriation of victims liaison work by police officers led to imposition of ‘substitute’ RJ practices in YOTs which omitted victims altogether. The standard inclusion of letters of apology in panel agreements with young people is rendered meaningless when the victim is not accessible and provides ample ammunition for RJ detractors.4 Other substitute practices include: Victim Awareness training sessions (Barnet); Victims workbooks (Essex); Through the Gate programmes - enabling hardened offenders to make amends by ‘educating’ young offenders compelled to attend day trips into prisons (Hampshire); Police officers representing the community (Manchester).

Whilst grounding of RJ in the community is directly addressed by the introduction of volunteer Panel Members to facilitate victim-offender conferences5, the almost total absence of victims from panels gave rise to the notion of volunteers representing the wider community harmed by young people’s crimes, whilst simultaneously disempowering non-agency professionals from acquiring conference facilitation skills.

Notwithstanding, the outcomes from referral orders remain unequalled - consistently delivering the most effective of all available sentences since first introduction in 2001 6, with the majority of young people committed to custody for non-violent offences.7

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<tbody>
<tr>
<td>Referral Order %</td>
<td>41.3</td>
<td>42.6</td>
<td>41.5</td>
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<td>37.3</td>
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<tr>
<td>Custody %</td>
<td>74.8</td>
<td>74.9</td>
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<td>72.8</td>
<td>70.6</td>
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Despite the junior position of multi-disciplinary YOTs contemporaneously situated within 156 local authorities, 43 police forces, and Crime and Disorder Reduction Partnerships comprising agencies crisscrossing geographical boundaries, the remarkable commitment of YOTs to the RJ ethic is demonstrated by the success of referral orders, supported by a cohort of volunteer decision makers without the social status of magistrates who, as members of the judiciary largely eschew the ‘volunteer’ label.

Two major implications arise from the success of restorative justice orders in the youth court:

4 ‘So much for remorse!’ Daily Mail 24 November 2011

5 The Role of Community in Restorative Justice (Routledge: Frontiers of Criminal Justice 2015 by Fernanda Fonseca Rosenblatt)


7 Youth Justice Statistics 2014/15 Fig 7.2 p48
a. delivery of the lowest reoffending rates of all available penalties could be significantly improved by direct victim participation in conferences facilitated by members of the community

b. the referral order should extend to 18-25 year olds, in recognition of their vulnerability whilst still developing cognitive processing during maturation

2. Awareness and understanding – People are aware of RJ and its potential benefits (particularly for victims). They understand what RJ entails and its place in the CJS. Victims and offenders can make informed decisions about participating in RJ and know how to access it.

*Restorative Justice Action Plan for the criminal justice system to March 2018*

Vision: RJ to be available at all stages of the criminal justice system in England and Wales ie where an offender receives an out-of-court disposal, after an offender has been convicted, but before the offender is sentenced and while an offender is serving a sentence.

- Laura Coel’s 2015 restorative justice conference with her step father who had sexually abused her from age 8 to 14, took place after release of the perpetrator when Laura was approaching 30 years of age following publicity arising from the Jimmy Savile inquiries. Ms Coel’s case demonstrates that the above vision is too limited: that a truly victim centred vision for RJ is that it operates from within the heart of communities where those directly impacted by crime are located, both within and outside of criminal justice settings.

A major by-product of Ms Coel’s case was to lay to rest the mythology created by criminal justice traditionalists - that RJ is only appropriate for low level offences.

National television and radio broadcasts of Ms Coel’s testimony at a time of moral panic over child sexual abuse has created a real window of opportunity for taking RJ forward.

- Dan Riesel’s 2013 TED Talk: “The Neuroscience of Restorative Justice” detailed the neuroscientific effects on offenders of the journey into empathy, which RJ provides. Broadcast to a restricted audience of learning professionals when Community Resolutions were widely practiced, the significance of the study for criminal justice policy and practice by development of RJ in the offender desistance journey may well have been lost.

3. Good quality – RJ is safe, competent and focused on the needs of the victim. RJ is always delivered by a facilitator trained to recognised standards and only takes place where an assessment by the facilitator indicates that this would be an appropriate course of action for all relevant parties with a particular emphasis on ensuring there is no re-victimisation.

- A key criticism of RJ – particularly by women and frontline Domestic Violence charities – is a perceived lack of impartiality when professional agency facilitators are seen by victims as working

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8 Effective approaches with young adults: A guide for Probation Services - Transition to Adulthood (T2A) Alliance 2015


10 Dan Riesel: ‘The Neuroscience of Restorative Justice’ TED2013: 629,960 views
to support the perpetrator/offender. Although the impact of coercive control is now recognised in statute, victims’ confidence to participate in RJ may only be gained through acknowledged impartiality from delivery by independent members of the Community.

• The Pre-Sentence Crown Court Pathfinder project underlined and amplified the crucial role of the community in developing and delivery of RJ. Previously the role of volunteers in RJ was undermined by a claimed ‘lack of professionalism’, most clearly expressed in the 2010 Police Foundation’s recommendation, supported by the Restorative Justice Council (RJC), that youth offending Panel Members should be abolished, with volunteers retrained as mentors.12

• Despite the writer’s active participation in, and advocacy of, the national RJ system for youth since 2006 - yet still without direct contact with crime victims after nine years – volunteering for the Crown Court Pathfinder enabled first hand witness of the extent to which victims are shut out, and indeed, re-victimised when an offender pleads guilty. With no subsequent contact from police after charge; no information provided in respect of the sentence hearing and no opportunity to make a Victim Personal Statement for the sentence because the offender pleaded guilty, RJ offered the only available means of self-expression.

• Unlike youth justice panels, where Panel Members are ‘wheeled out’ to conduct a meeting at which the offender and parents are the only likely attendees, the Pathfinder enabled volunteers, under supervision, to make first and on-going contact with both victims and offenders; to undertake risk assessments; and to see cases through sentencing to post-conference feedback. Whereas Panel Members and magistrates are decision makers, RJ facilitators become problem solvers. This wrap around RJ approach, conducted outside of formal settings in the main, enabled confidence building in participants to an unprecedented degree. This, in sharp contrast with court to which the victim(s) received no invitation to attend or, if invited to testify, were subjected to extended waiting times for legal exchange and where emotions are entirely unwelcome. Indeed when the family of an offender were unable to control their expression of grief in response to a sentence previously adjourned for RJ to take place, the judge proceeded to order them out of the court - whereas RJ had actively sought and embraced the family’s support.

• In addition to the writer’s BTEC Level 4 Professional Award in Restorative Justice Approaches previously achieved, the Pathfinder enabled accreditation to BTEC Level 3 Advanced Award in Practitioner Training for Restorative Practices. The training provider also received the Training Approval Scheme quality mark under the Restorative Justice Council’s 2015 pilot.

It is important to note that no accreditation opportunities are available to volunteer Panel Members, due to lack of financial provision.

• The role of the community in supporting Therapeutic and Community Safety measures for prevention of sexually harmful behaviour and management of offenders in Circles of Support and Accountability (COSA) cannot be overstated at this time of unprecedented growth in sexual offending, particularly amongst young people.

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11 Restorative justice in domestic violence cases is justice denied: Jill Filipovic - The Guardian 2013

12 The Independent Commission on Youth Crime and Antisocial Behaviour 2010 : ‘Time for a Fresh Start’
Generic training in the field of sexual offending for volunteer Panel Members is also essential as sexual offending becomes more prevalent amongst children and young people.

In 2015, the Association’s application to the Lottery’s Reaching Communities Fund to oversee and deliver in-service training to volunteer Panel Members was declined.

4. Moving forward

- Recognition of the success of court ordered RJ was cemented in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which introduced a second RJ order for youth reoffending and enabled high quality training of Panel Members in conference facilitation by RJC accredited trainers. However the absence of victims’ data continues unabated, with the costs of volunteers’ training remaining undercapitalised.

- In addition to volunteering as a Panel Member the writer, who had waited nine years to undertake a youth RJ conference, contributed to the Pre-Sentence Pathfinder at Wood Green Crown Court in 2014-15, when a blanket refusal by the Metropolitan police to collaborate in sharing victims’ data on the basis of advice from their in-house lawyers, confirmed a previously undocumented position that had been in place since 2001 to obstruct the progress of RJ when first introduced as a national service in the UK.

- The dissatisfaction and anger expressed by victim participants in a Randomised Control Trial of out of court RJ disposals piloted by West Midlands police, lends significant weight against police leadership of RJ delivery.

- A 2015 study of The use of Restorative Justice by the police in England and Wales concludes:

The use of restorative processes by police services was commonly reported, with large disparity between RJ policy and methods of delivery. Both case studies displayed little victim involvement in any RJ processes, and varying levels of guidance or support were available to officer facilitators in order to assist RJ delivery. The available guidelines, training and support largely determined the quality and ‘restorativeness’ of RJ processes delivered by police officers, but this was also affected by the inherent police cultures both within and between policing roles. This culture notably influenced the lack of the victim-focused ideal of restorative justice within police practice. A contrast between police services, including an international comparator, shows the questionable suitability of officers in the role of RJ facilitator, and highlights the need for comprehensive policy and guidelines for police officers where they are expected to deliver restorative processes as part of their daily work. Individual force priorities are shown to be highly influential in officer use of RJ and goes far to explain police officer confusion, lack of confidence and differences both within and between police services.

5. Conclusions


14 Operation Turning Point: interim report on a randomised trial in Birmingham, UK - P Neyroud & M Slothower 2014

It is essential to ensure that progress in RJ is accelerated by the Crown Prosecution Service taking ownership of the role of victim oversight, information sharing and liaison. By this means the absence of consistency in standards and delivery may be addressed; the possibility of interference with evidence from participants’ accounts in the RJ preparation process minimised, and denial of mental health support for victims avoided – especially for young people.

Transfer of victim oversight from Police to the Crown Prosecution Service is consistent with the Association’s recommendation of a youth Diversion system first proposed in our 2010 submission to the Law Commission’s consultation: Unfitness to plead in the Magistrates court; also recommended in the Association’s submission to the 2014 Carlile Review of the youth court. Further details are provided in the submission to the Committee’s inquiry into the role of the magistracy.

January 2016

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16 Youth Justice Legal Centre: Law Commission Unfitness to Plead report

17 The Michael Sieff Foundation: An Inquiry by Parliamentarians into the operation and effectiveness of the youth justice system, chaired by Lord Carlile